IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6175 OF 2005

The State of Maharashtra .. Applicant

Versus

Ramesh Govind Khadkar .. Respondent

Mr.R.Y.Mirza, A.P.P. for State - Applicant

Mr.Rahul S. Thakur for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 31st August 2006.

P.C.

. This is an application by the State for cancellation of pre-arrest bail granted by Additional Sessions Judge, Raigad on 25th August 2004 in Criminal Misc.Application No.410 of 2004.

2. Learned A.P.P. urged in support of this application that the sessions Judge has erred in granting pre-arrest bail to the applicant in C.R.No.196 of 2004 registered under section 326, 329, 337, 504 read with section 34 I.P.C. She submits that the complainant was assaulted on 16th July 2004 at Kharghar, Sector 12, Shivaji Chowk. At that time respondent accused pelted stones and therefore, the complainant raised hue and cry. Some persons came to help complainant along with unknown friends. Respondent picked up iron bar lying at the nearby construction site and assaulted Raju who is friend of complainant so also a friend of Raju. Son of complainant Raju sustained serious injuries on the shoulder whereas other friend sustained injuries on his head and right hand. Respondent and other accused, after assault, ran away in a car which was parked nearby.

3. It is her submission that pre-arrest bail should not have been granted as the ingredients of section 438 enabling the court to grant pre-arrest bail were admittedly not satisfied in this case. She submits that section 34 was invoked in this case as the accused share common intention while assaulting. The medical report and other documents show that the applicant was not entitled to pre-arrest bail.

4. Alternatively, she submits that the respondent accused has criminal antecedents and the material in that behalf has been set out at paras 6 and 7 of the application. She has pointed out that after the applicant was enlarged on bail in this C.R. he has committed other offences and thus has misused the liberty granted to him and the application, therefore, be allowed.

5. She has also submitted that the applicant

has been enlarged on pre-arrest bail without any conditions being imposed on him. She submits that the charge sheet is not filed in this case. She submits that two others are enlarged on regular bail, while one of the accused is absconding. In such circumstances and considering seriousness of the charge, the application ought not to have been granted.

6. On the other hand, learned Counsel appearing for accused invites my attention to the affidavit in reply and points out that the complaint is filed by one Dhondu Bangar who is working with police department as A.P.I. He has a grudge against the respondent and, therefore, had filed a false and frivolous complaint. Respondent was only present at the time of incident and there is no role attributed to him. The complaint itself was malafide and hence the learned Judge was right in granting anticipatory bail.

7. In my view, considering that the order has been passed on 25th August 2004 and the details of the offences which are alleged to have been committed after the said order, are also of 2005, however, it is pointed out to me that the respondent is enlarged on bail in these C.Rs. as well. In such circumstances, no useful purpose will be served by going into the merits of this application.

8. The learned Judge, however, ought to have been careful inasmuch as there is no condition imposed by him at all in the order to attend the police station, save and except stating that he will assist investigation in completing the same. Similarly, as pointed out by the learned A.P.P. the respondent accused was not attending despite being summoned. It is only when this application was filed and notice of the same was issued and served on the respondent, that he has appeared.

9. In my view, interest of justice would be sub-served if the present application is disposed of by directing that the respondent accused shall attend Kalamboli police station once in a fortnight on Saturday between 5.00 p.m. and 7.00 p.m. The order dated 25th August 2004 passed by the learned Sessions Judge shall remain operative only till the charge sheet is filed whereafter it would be open for respondent to apply for regular bail, which application shall be considered on its own merits and in accordance with law.

(S.C.Dharmadhikari, J)